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CMA.Nos.1409 of 2020 and 503 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.Nos.1409 of 2020 and 503 of 2022

and

CMP.No.10313 of 2020

CMA.No.1409 of 2020

Future Generali India Insurance Company Ltd.,
3rd Floor, Plot No.55 (Old No.27)
Vijay Raghava Road, T.Nagar,
Chennai-600 017.

...Appellant

Vs

1. Arokia Mary Stella
2. TVS Communication Solutions Ltd.,
No.45, Vivekanandha Nagar,
Peramanur Village, S.P.Koil Post,
Singamperumal Kovil,
Kancheepuram District.

... Respondents

CMA.No.503 of 2022

Arokia Mary Stella

... Appellant

Vs



CMA.Nos.1409 of 2020 and 503 of 2022

1. TVS Communication Solutions Ltd.,
No.45, Vivekanandha Nagar,
Peramanur Village, S.P.Koil Post,
Singamperumal Kovil,
Kancheepuram District.

2. Future Generali India Insurance Company Ltd.,
3rd Floor, Plot No.55 (Old No.27)
Vijay Raghava Road, T.Nagar,
Chennai-600 017.

... Respondents

COMMON Prayer in CMA.Nos.1409 of 2020 and 503 of 2022 :

Civil Miscellaneous Appeals are filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and Decree made in MCOP.No.4800 of 2016 dated 01.11.2019, on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

CMA.No.1409 of 2020

For Appellant : M/s.Harini
(for M/s.M.B.Gopalan Associates)
For Respondents : Mr.K.Varadha Kamaraj for R1
: Not ready in notice-R2

CMA.No.503 of 2022

For Appellant : Mr.K.Varadha Kamaraj
For Respondents : M/s.Harini
for M/s.M.B.Gopalan Associates for R2
: Not ready in notice-R1



COMMON JUDGEMENT

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Both these appeals arise from and out of the award passed by the Motor Claims Tribunal, No.II Court of Small Causes, Chennai in MCOP.No.4800 of 2016. CMA.No.1409 of 2020 which has been filed by the second respondent/Insurance Company questioning the quantum of compensation is on the higher side. CMA.No.503 of 2022 has been filed by the claimant seeking enhancement.

2. The facts briefly narrated are as follows and the parties are being referred in the same rank as before the Tribunal. The first respondent remained exparte and further the Insurance Company has only questioned the quantum.

The petitioner is the mother of one Deepak Maria Joseph, an 18 year old student who had died in a road accident on 26.05.2016. The contention of the petitioner is that the said Deepak was travelling as a pillion rider in a motorcycle bearing Reg.No.TN-09-CB-8219 travelling from South to North near Simpson Kalvoi on the Madhavaram High Road. At that time, a



private bus bearing Reg.No.TN-19-E-5474 was proceeding in the same direction and on account of its rash and negligent driving, the said bus had hit the deceased Deepak's motor bike, as a result of which the said Deepak, the pillion rider was thrown out and sustained injuries to which he had succumbed at the hospital. The claimant had claimed a sum of Rs.20,00,000/- as compensation.

3. The respondent/Insurance Company had alone contested the claim since they are the insurer of the offending vehicle. Apart from raising the conventional defence, the learned counsel appearing for the Insurance Company had contended that the accident had occurred only on account of the reckless driving by the rider of the motorcycle. He would further submit that the age, occupation and monthly income as projected was totally erroneous and the same have to be proved by the claimant.

4. Upon hearing both sides, the Tribunal has proceeded to hold that the accident had occurred only on account of the rash and negligent driving of the driver of the bus. The Tribunal thereafter proceeded to award a sum of Rs.18,45,000/- as compensation. The Tribunal had adopted a monthly



income of Rs.10,000/- and added 50% towards future prospects.

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5. Challenging the said award as being on the lower side, the claimant is before this Court and challenging it to be on the higher side, the Insurance Company is before this Court.

6. Heard the submissions made by both counsels and perused the materials available on record.

7. Admittedly, Future Prospects has been granted at 50%, whereas the requisite percentage commensurate to the age of the deceased is only 40%. Therefore, the amount under the head of "Loss of Dependency" would be $\text{Rs.10,000/-} + 40\% \times 12 \times 18 \times 50/100$ would be Rs.15,12,000/- . The Tribunal has awarded a sum of Rs.1,00,000/- under the head "Loss of Love and Affection" and Rs.1,00,000/- under the head "Filial Consortium". The amount is on the higher side and the petitioner would be only entitled to Rs.40,000/- under the head "Filial Consortium". The records would show that no amount has been granted towards "Loss of Estate", for which, a sum of Rs.15,000/- shall be awarded and in other aspects, the award amount



remains the same.

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Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Dependency	16,20,000	15,12,000	Set aside
2.	Loss of love and affection	1,00,000	1,00,000	Confirmed
3.	Filial consortium	1,00,000	40,000	Set aside
4.	Medical expenses	10,000	10,000	Confirmed
5.	Funeral expenses	15,000	15,000	Confirmed
6.	Loss of Estate	-	15,000	Granted
	Total	18,45,000	15,92,000	Reduced Rs.1,53,000/-

8. In the result, the appeal filed by the second respondent/Insurance Company namely CMA.No.1409 of 2020 is partly allowed and the appeal filed by the petitioner in CMA.No.503 of 2022 stands dismissed. In view of the above modification, the Insurance Company is directed to deposit the entire modified award of Rs.15,92,000/- with interest at the rate of 7.5% p.a. after deducting the amount that has already been deposited by them within a period of six weeks from the date of receipt of copy of this order. On such deposit, the petitioner/claimant is permitted to withdraw the entire award



amount with proportionate accrued interest and costs, by making necessary applications. The claimant is directed to pay the Court fee for the compensation amount, if required. The Tribunal below shall not disburse the amount till such time as proof of payment of Court Fee has been produced by the claimant. Consequently, connected miscellaneous petition is closed. No costs.

24.11.2022

vv/dpq

Index: Yes/No

Speaking order/non-speaking order

To

1. The Motor Accident Claims Tribunal,
II Court of Small Causes,
Chennai.
2. The Section Officer,
VR Section, Chennai.



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CMA.Nos.1409 of 2020 and 503 of 2022

P.T.ASHA, J.,

Vv/dpq

**C.M.A.Nos.1409 of 2020 and 503 of 2022
and
CMP.No.10313 of 2020**

24.11.2022